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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8 Kolela Mpoyo,

9 Plaintiffs,

10 vs.

11 FIS Management Services LLC ,

12 Defendant.  
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No. CV-17-04307-PHX-SPL

**ORDER**

15 On April 5, 2019, Defendant filed a Motion for Summary Judgment (Doc. 71). The  
16 Court issued an Order on April 15, 2019, notifying Plaintiff of the Motion and specifically  
17 instructing Plaintiff to respond by May 15, 2019 (Doc. 74). Plaintiff did not file a Response  
18 until October 8, 2019 (Doc. 92). Pending before the Court are Defendant's Motion to  
19 Strike and Motion for Summary Disposition (Doc. 95) and Plaintiff's Motion to Strike  
20 Defendant's Motion for Summary Judgment and Motion for Summary Disposition (Doc.  
21 96).

22 **A. Plaintiff's Motion to Strike (Doc. 96)**

23 Plaintiff seeks to strike Defendant's Motion for Summary Judgment for failure to  
24 include a certificate of conferral as required by the Case Management Order (Doc. 21 at  
25 5). The Order provides that the failure to attach a certificate of conferral *may* result in the  
26 motion being summarily stricken by the Court. The language, however, is permissive and  
27 not mandatory, the Motion was not stricken, and Plaintiff was still required to respond  
28 (Doc. 74). The Court is further disinclined to strike the Motion now that Plaintiff has

1 objected seven months after the motion was filed and after the dispositive motion deadline  
2 has run. Instead, the Court will address the merits of Defendant's motion.<sup>1</sup>

3 **B. Defendant's Motion to Strike and for Summary Disposition (Doc. 95)**

4 Defendant seeks to strike Plaintiff's Response to the Motion for Summary Judgment  
5 as untimely (Doc. 95). Plaintiff objects to the Motion to Strike, arguing that Defendant's  
6 Motion for Summary Judgment was improperly filed prior to the close of discovery and  
7 claiming Plaintiff could not possibly be expected to respond prior to the discovery deadline.  
8 The original dispositive motion deadline was set for March 2, 2019 (Doc. 21) and was  
9 extended to April 5, 2019 by Court Order (Doc. 65). Defendant filed its Motion for  
10 Summary Judgment in compliance with the then current dispositive motion deadline (Doc.  
11 71). Although the discovery and dispositive motion deadlines were again extended (Doc.  
12 91), Plaintiff never sought an additional extension of the May 15, 2019 response due date  
13 (Doc. 74). *See* Fed R. Civ. P. 6(b); Fed. R. Civ. P. 56(d). To the extent Plaintiff argues  
14 that the extension of the dispositive motion deadline somehow superseded the response  
15 deadline, that argument is incorrect. *See* LRCiv 56.1(d) (setting the deadlines for  
16 responsive and reply memoranda). The fact that Plaintiff is appearing pro se does not  
17 excuse any failure to comply with the Federal Rules of Civil Procedure. *See Ghazali v.*  
18 *Moran*, 46 F.3d 52, 54 (9th Cir. 1995) ("Although we construe pleadings liberally in their  
19 favor, pro se litigants are bound by the rules of procedure."). Accordingly, the Court will  
20 strike Plaintiff's response (Doc. 92) as untimely.

21 Based on Plaintiff's untimely motion, Defendant seeks summary disposition on its  
22 Motion for Summary Judgment. The Court, however, finds that doing so would not fulfill  
23 the requirements of Rule 56 of the Federal Rules of Civil Procedure and would result in an  
24 improper sanction for Plaintiff's failure to file a timely response. The Court will thus

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26 <sup>1</sup> The Court further notes that it disagrees with Plaintiff's characterization of  
27 Defendant's Motion for Summary Judgment and Motion for Summary Disposition as  
28 duplicative. A motion for summary disposition pursuant to LRCiv 7.2 and a motion for  
summary judgment under Rule 56 of the Federal Rules of Civil Procedure are two distinct  
and separate motions. Accordingly, the Court will not strike them as duplicative.

1 address the merits of the motion.

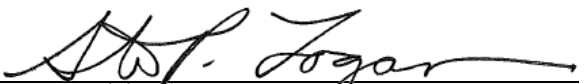
2 **IT IS THEREFORE ORDERED** that Plaintiff's Motion to Strike (Doc. 96) is  
3 **denied.**

4 **IT IS FURTHER ORDERED** that Defendant's Motion to Strike and Motion for  
5 Summary Disposition (Doc. 95) is **granted in part and denied in part.**

6 **IT IS FURTHER ORDERED** that Defendant's Motion to Strike (Doc. 95) is  
7 **granted.** Plaintiff's Response to the Motion for Summary Judgment (Doc. 92) is **stricken.**

8 **IT IS FURTHER ORDERED** that Defendant's Motion for Summary Disposition  
9 (Doc. 95) is **denied.**

10 Dated this 20th day of November, 2019.

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12   
13 Honorable Steven P. Logan  
14 United States District Judge  
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